

The Commonwealth of Massachusetts
DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

September 24, 2004

D.T.E. 03-34

Petition of Western Massachusetts Electric Company for approval of its Transition Charge Reconciliation filing for the period January 1, 2002 through December 31, 2002.

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FOR: WESTERN MASSACHUSETTS ELECTRIC
COMPANY
Petitioner

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I. INTRODUCTION

On March 31, 2003, pursuant to G.L. c. 164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy (“Department”) in Western Massachusetts Electric Company, D.T.E. 97-120-E (2000) (“Restructuring Plan”), Western Massachusetts Electric Company (“WMECo” or “Company”) filed with the Department its reconciliation filing for the calendar year 2002. The Company’s filing included data on WMECo’s standard offer, default service, and transmission reconciliation mechanisms. That matter was docketed as Western Massachusetts Electric Company, D.T.E. 03-34.

In accordance with the Department’s directives in Western Massachusetts Electric Company, D.T.E. 01-36/02-20 (2003), WMECo resubmitted its transition charge reconciliation filing for calendar year 2002 on September 22, 2003. The Department conducted a public hearing and procedural conference on October 28, 2003. The Attorney General filed notice of intervention pursuant to G.L. c. 12, § 11E. The Western Massachusetts Industrial Customers Group (“WMICG”), was granted intervenor status in this proceeding on November 18, 2003.

On February 10, 2004, the Department conducted an evidentiary hearing. Robert A. Baumann, director of revenue regulation and load resources for Northeast Utilities Service Company (“NUSCO”), Jeffrey R. Cahoon, director of revenue requirements for NUSCO, and Paula M. Taupier, manager of transmission, regulatory policy and planning for NUSCO, testified on behalf of the Company. David J. Effron testified on behalf of the

Attorney General. The evidentiary record consists of 80 exhibits and responses to three record requests. The Company and the Attorney General filed briefs on March 10, 2004. The Attorney General and WMICG filed reply briefs on March 18, 2004.

In this Order, we address the following issues: (1) the appropriateness of the Company's standard offer service, default service, and transmission reconciliations for the 2002 calendar-year period; (2) whether the Company's prior year carrying charge amount should be compounded when included in the current year's transition cost; and (3) whether the Company may accelerate the amortization of its non-securitized transition costs.

II. STANDARD OF REVIEW

On January 5, 2000, the Department approved WMECo's Restructuring Plan compliance filing. Western Massachusetts Electric Company, D.T.E. 97-120-E (2000). In reviewing annual reconciliation filings, the Department must ensure that the proposed reconciliations are consistent with or substantially comply with Chapter 164 of the Acts of 1997 ("Electric Restructuring Act" or "Act"), the Company's Restructuring Plan, applicable law, and Department precedent. See, e.g., Boston Edison Company, D.T.E. 98-111, at 4 (1999).

III. STANDARD OFFER/DEFAULT SERVICE & TRANSMISSION COSTS

The parties to this proceeding have raised no issues pertaining to the Company's 2002 calendar-year standard offer service, default service, or transmission reconciliations in the filing (WMECo Brief at 3; Attorney General Reply Brief at 1). The Company provides transmission service to its retail customers under three Federal Energy Regulatory Commission

(“FERC”) approved tariffs: Northeast Utilities’ FERC Electric Tariff No. 9; NEPOOL’s Open Access Transmission Tariff FERC Electric Tariff No. 1; and ISO New England’s FERC Electric Tariff No. 1 (Exh. WM-PMT at 4). The Department has reviewed these reconciliations and finds that the Company calculated these expenses consistent with the Restructuring Plan, FERC approved tariffs, and the Department’s directives in Western Massachusetts Electric Company, D.T.E. 01-36/02-20, at 6-7. Therefore, the Department approves the Company’s 2002 calendar-year standard offer service, default service, and transmission expenses.

IV. TRANSITION ACCOUNT BALANCES

A. Calculation of Carrying Charges on the Transition Account Balance

1. Introduction

WMECo reconciles its fixed and variable transition costs with transition charge revenues on a calendar year basis. A carrying charge at the Company’s overall annual weighted cost of capital is applied to the over- or under-recovery balance. WMECo did not compound the carrying charges on the transition charge’s over- or under-recovery from the prior year. The issue is whether the prior year’s carrying charge amount should be compounded when computing the current year’s transition cost.

2. Positions of the Parties

a. Attorney General

The Attorney General argues that, in calculating its total transition cost every year, WMECo has not included the cost of its prior year’s carrying charges (Attorney General Brief

at 2). The Attorney General states that because the carrying charge cost for a given year is a component of the total transition cost, it follows that the cumulative balance of the prior year's carrying charge should be included in the balance on which carrying charges are accrued (Attorney General Brief at 2). In response to the Company's assertion that its current method of calculating carrying costs is consistent with the method approved in Western Massachusetts Electric Company, D.T.E. 00-33, and D.T.E. 01-36/02-20, the Attorney General states that these orders do not specifically address the issue of compounding the carrying charges applied to the transition account balance (Attorney General Reply Brief at 3). Also, the Attorney General argues that it would be entirely appropriate for the Department to address the issue in this proceeding because the over-recovery amount is material, whereas the amounts involved in prior transition filings were relatively small, especially in light of the main issues addressed in those reconciliations (Attorney General Reply Brief at 3). Lastly, the Attorney General argues that the Department is not precluded from identifying and remedying an issue not previously recognized, particularly when the issue arises in the context of a reconciling mechanism (Attorney General Reply Brief at 3, citing Fitchburg Gas and Electric Light Company, D.T.E. 99-66-A, at 24 (2001)).

c. Western Massachusetts Electric Company

The Company acknowledges that it has not compounded carrying charges on the balance accrued in prior years. The Company claims that its current method of calculating carrying costs is consistent with the method approved in D.T.E. 00-33 and

D.T.E. 01-36/02-20 (Company Brief at 4). The Company claims that the changes to the transition charge calculation advocated by the Attorney General cannot be supported by any outside authority (id. at 4). Further, the Company claims that the Attorney General's motive for questioning the Company's calculation at this time is based on his belief that his proposed method may lower the transition costs the Company is allowed to recover beginning in 2003 (Company Brief at 4). The Company argues that the method for calculating carrying costs should be consistent from one year to the next, and should not be driven by whether or not a specific party benefits as a result of using a particular method in any given year (Company Brief at 4). Therefore, the Company states that its proposed method of calculating its carrying cost should be approved by the Department (Company Brief at 5).

3. Analysis and Findings

The issue is whether the prior year's carrying charge amount should be compounded when included in computing the current year's transition costs. The Department's long-standing policy is to require interest compounding. See Boston Edison Company, D.P.U. 85-1E, at 4-5 (1985); Boston Edison Company, D.P.U./D.T.E. 97-95, at 94 (2001).¹ Interest compounding is determined by including the balance of carrying charges accrued in prior years in the calculation of the transition account balance to which carrying charges are

¹ Other electric distribution companies compound the interest in their respective transition cost calculations. Boston Edison Company, D.T.E. 03-117 (2003) (Exh. BEC-JFL-1 (Supp) at 1); Cambridge Electric Light Company, D.T.E. 03-118 (2003) (Exh. CAM-JFL-1, at 1); Commonwealth Electric Company, D.T.E. 03-118 (2003), at 1; Fitchburg Gas and Electric Light Company, D.T.E. 03-115 (2003) (Sch. RT-1, at 1); Massachusetts Electric Company, D.T.E. 03-124 (2003), (Exh. TMB-10, at 2).

applied in the current year (Exh. AG 2-2). Compounding the carrying charges in this manner ensures the proper calculation of transition costs irrespective of whether there is an under- or over-recovery in any particular year (id.).

With respect to the Company's argument that the Department's approval of previous reconciliations precludes adoption of the Attorney General's proposal, the issue of whether carrying costs should be compounded from one year to the next has never been specifically addressed either during the transition costs reconciliation proceedings or in the subsequent true-up filings. The Department's acceptance sub silentio of a previously approved calculation does not preclude different treatment upon a finding that it is warranted. Boston Gas Company, 96-50-C (Phase I) at 33 (1997), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673 (1993) and NYNEX, D.P.U. 94-50, at 444 (1995); see also Fitchburg Gas and Electric Light Company, D.T.E. 99-66-A at 24 (2001). Further, the Company has not provided any independent rationale to support its proposed calculation of carrying costs.

For all the reasons discussed above, the Department is not persuaded by the Company's arguments that its current method for calculating carrying costs is appropriate. Therefore, the Department directs WMECo to compound on an annual basis the carrying charge applied to the transition account balance.

V. ACCELERATED AMORTIZATION OF TRANSITION COSTS

A. Introduction

The Company's net transition cost, including carrying costs at the end of 2002, was an over-recovery of \$28,190,000 (RR-3, at 2). This represents the amount of transition charge

revenues collected by WMECo from March 1998 through December 2002, offset by transition costs for the same period (Exh. WM-JRC at 6-7).

The Company proposes to apply the cumulative over-recovery, \$28,190,000, to the transition costs by accelerating the amortization of its non-securitized fixed transition costs in an amount equal to the cumulative over-recovery as of December 31, 2002 (Exh. WM-JRC at 8). The Company's unrecovered fixed transition cost balance as of December 31, 2002, is \$88,778,000 (Exh. WM-JRC at 8).² WMECo calculates that the net fixed transition cost balance as of December 31, 2002, after applying the proposed accelerated amortization, would be \$60,588,000 (\$88,778,000 minus \$28,190,000) (Exh. WM-JRC at 8).

The Company proposes to apply the entire \$28,190,000 over-recovery to the unrecovered transition costs, by accelerating the amortization of its non-securitized transition costs (Exhs. WM-JRC at 8; DTE 1-2). Specifically, the Company suggests that the over-recovery of transition costs first be applied to the unrecovered Millstone Unit 2 costs with the remaining over-recovery amount applied to the uncollected amount of additional deferred taxes determined under statement of Financial Accounting Standard 109 ("FAS 109") (Exh. DTE 1-2).

The unrecovered Millstone Unit 2 transition costs earn a return at the Company's overall annual weighted cost of capital (Exh. WM-JRC-3, at 12). The unrecovered FAS 109

² The unrecovered fixed transition cost balance consists of: \$4,283,000 (Department of Energy-Decontamination and Decommissioning); \$33,664,000 (Financial Accounting Standard 109); \$4,814,000 (Financial Accounting Standard 106); \$1,405,000 (Prior Spent Nuclear Fuel); \$37,522,000 (Millstone Plant 1); and \$7,090,000 (Millstone Plant 2) (Exh. WM-JRC at 8).

costs, as filed by the Company, earn a return at the overall annual weighted cost of capital for only a portion of the costs, the remainder of the unrecovered FAS 109 costs do not earn a return (id.).

B. Position of the Parties

1. The Attorney General

The Attorney General takes issue with the Company's position that the Department should adopt the principle that accelerated amortization is applicable for all transition costs, both those earning a return and those not earning a return (Attorney General Reply Brief at 1-2). According to the Attorney General, G.L. c. 164 § 1G(e) does not address the issue at hand and, therefore, does not support the Company's position (id. at 1).³

Also, the Attorney General rejects the Company's contention that customers are not being overcharged by the Department's approval of the transition charge in Western Massachusetts Electric Company, D.T.E. 01-101, allowing for the collection of a larger sum of revenues than the estimated transition charge when the amortization of these costs was

³ The Attorney General disputes the Company's interpretation of the following sentence in § 1G(e)(a)(2): "[a]mortization of transition cost recovery may be accelerated relative to recovery of such costs assumed in current rates, but in no case shall amortization result in an increase in rates for any class of customers of an electric company over rates in effect as of December 31, 1997." The Attorney General contends that the restriction to then "current rates" and the modifying clause focusing the subject matter of the sentence on "rates in effect as of December 31, 1997" addresses this issue but only for those rates in effect as of December 31, 1997, the initial unbundling period (Attorney General Reply Brief at 1-2). Therefore, the Attorney General contends that § 1G(e) does not apply to any assets not earning a return at the overall weighted cost of capital, and any over-recovery with regard to such balances should be flowed back to customers, thereby reducing rates (id. at 1).

originally scheduled (Attorney General Reply Brief at 2, citing Company Brief at 7; Tr. at 44). To the contrary, the Attorney General maintains that by definition, when charges are at a level such that revenues exceed costs, a utility over-charges customers (Attorney General Reply Brief at 2, fn. 2). The Attorney General notes that the Company has not disputed his argument that applying the over-recovery to assets not earning a return would deprive customers of the total value of the accelerated pre-payments (id.). Therefore, the Attorney General argues that the Company should not be allowed to set the transition charge at a level that will over-collect transition costs (id. at 2).

The Attorney General notes that the Department stated “[W]hile the Act may allow full recovery of regulatory assets, this provision is not an opportunity for a company to experience a windfall nor is it intended to supplant previous Department orders” (id., citing Cambridge Electric Company, D.T.E. 99-90, at 12 (2001)). Further, the Attorney General states that unless the Company can establish that accelerated recovery of transition charges will produce actual customer savings by the avoidance of carrying charges or some other charge, the Company’s customers should not be compelled to shoulder additional financial burdens (Attorney General Reply Brief, at 2-3).

The Attorney General contends that over-recoveries of transition costs should be applied only to the unrecovered costs of stranded assets that are earning a return at the Company’s overall annual weighted cost of capital, e.g., Millstone Unit 2 fixed costs, and that portion of the FAS 109 regulatory asset earning a return at the overall annual weighted cost of capital (Attorney General Brief at 1-2). The Attorney General states that accelerating the

amortization schedule will reduce the overall transition cost balance for customers, and to the extent that there are no assets remaining that are earning a return at the overall annual weighted cost of capital, the balance of the over-recovery should be flowed back to customers immediately, thereby reducing rates (Attorney General Reply Brief at 1).

Further, the Attorney General notes that the Department disallowed a return on the Company's unrecovered Millstone Unit 1 plant balance because of WMECo's imprudence (id. at 2, n.4, citing D.T.E. 97-120, at 25-31).⁴ He states that the Company has amortized the plant balance over a twelve-year period with no return, and he argues that to issue an order in this proceeding allowing accelerated recovery of Millstone Unit 1's amortized balance would contradict the Department's findings concerning Millstone Unit 1 in D.T.E. 97-120 (Attorney General Reply Brief at 2 n.4).

2. Western Massachusetts Industrial Customers Group

WMICG notes that the magnitude of the transition cost over-recovery as of December 31, 2002, is \$28,190,000, with an additional \$25,000,000 as of December 31, 2003 (WMICG Reply Brief at 1, citing Company Brief at 6). According to WMICG, the magnitude of these over-collections for the last two years has imposed an unnecessary additional charge on ratepayers of approximately \$0.0066 per kilowatthour ("KWH") on average (WMICG Reply Letter at 1).

⁴ The Company testified that the transition cost balance at the end of 2003 is an over-recovery of approximately another \$25 million (Tr. at 43). Therefore, the accelerated recovery of Millstone Unit 1's amortized balance may be at issue in the Company's next reconciliation proceeding.

WMICG agrees with the Attorney General that any over-collection of transition costs must first be applied to those transition costs earning a return,⁵ and if there are no longer any transition costs that earn a return, then ratepayers should be compensated by WMECo for the prepayment of transition costs at the Company's overall annual weighted cost of capital (id.).⁶

WMICG requests that the Department review WMECo's estimated sales and estimated transition costs in its annual rate change filing to avoid major over-collections in the future (id. at 2). WMICG contends that WMECo should be required to immediately notify the Department if its transition cost recovery varies by more than five percent from the scheduled cost recovery (id.). WMICG asserts that, in the future, the Department should approve a transition charge rate set at a level sufficient only to recover the estimated transition costs and including a small cushion to satisfy the rate bond covenants (id. at 2).

3. The Company

The Company argues that there cannot be any limitation on the type of costs subject to accelerated amortization (Company Brief at 11). Further, the Company states that G.L. c. 164, § 1G(e) squarely addresses the issue of the accelerated amortization of transition costs (id. at 7). According to the Company, G.L. c. 164, § 1G(e) states in pertinent part that:

⁵ Although WMICG stated "earn a return," we note that the Attorney General's Reply Brief referred to earning a return at the *overall annual weighted cost of capital* (WMECG Reply Brief at 1; Attorney General Reply Brief at 1).

⁶ WMICG point out that the Company is requesting recovery of \$709,696 in interest expenses associated with the under collection of Standard Offer Service in 2001 (WMICG Reply Letter at 1, fn. 2; Exh. RAB-2, at 1), and \$335,402 in interest expenses associated with the under collection of Default Services in 2001 (WMICG Reply Letter at 1 n.2; Exh. RAB-4, at 1).

“Amortization of transition cost recovery may be accelerated relative to recovery of such costs assumed in current rates . . .” (id.).

The Company contends that accelerated amortization is an important enough matter that the Legislature gave the Department explicit directions on how to proceed through the Act (id.). The Company asserts that its proposed accelerated amortization is in full compliance with the Act (id. at 8). The Company asserts that where a statute is clear on its face, it must be construed in accordance with its plain meaning (id., citing Foss v. Commonwealth, 437 Mass. 584 (2000); Commissioner of Revenue v. Franchi, 423 Mass. 817 (1996); Marco v. Green, 415 Mass. 732 (1993)). Also, the Company points out that its proposed amortization would not increase rates above the level established in 1997 (Company Brief at 9 n.4).

The Company states that the transition charge approved by the Department in D.T.E. 01-101 allowed for the collection of a larger sum of estimated revenues than was needed to collect costs that were based on the original amortization schedules (id. at 7; Tr. at 44). According to the Company, this is a positive development and it does not mean that customers are being over-charged (Company Brief at 7). Rather, the Company contends that this “enhanced revenues” means that customers are that much closer to paying off the balance of fixed transition costs (id.). Therefore, the Company argues that it should be able to apply all transition cost over-recoveries to accelerated amortization, applied first to those costs earning a return (id. at 9).

With respect to FAS 109, the Company rejects the Attorney General’s assertion that accelerated amortization is appropriate only if the FAS 109 net fixed cost component earning a

return is also reduced by the amount of accelerated amortization (id. at 9-10). The Company explains that only the net FAS 109 balance (FAS 109 regulatory asset minus the FAS 109 liability) and not the entire FAS 109 regulatory asset earns a return (id. at 10). As of December 31, 2002, the net FAS 109 balance was \$14,043,000 (id.).

Further, the Company states that any amortization of the FAS 109 regulatory asset results in a reduction to the FAS 109 liability because the amortization is not deductible for tax purposes (id.). According to the Company, the reduction to the FAS 109 liability equals the tax gross-up which becomes due as the amortization is recovered from customers through the transition charge (id.). The Company maintains that the accelerated amortization of the FAS 109 regulatory asset will reduce the net fixed cost component earning a return, but not on a dollar for dollar basis (id.).⁷ Therefore, the Company calculates that the remaining \$21,100,000 of the over-recovery of the transition costs will reduce the balance that earns a return on an after tax basis by \$12,262,000 (id.). Based upon these factors, the Company concludes that, under its proposal, \$19,352,000 of the \$28,190,000 over-recovery will be credited to transition costs earning a return (id.).⁸

⁷ Stated in its simplest terms, the Company argues that the net fixed cost component earning a return will be reduced on an after tax basis, not on a pre tax basis (Company Brief at 10).

⁸ The first \$7,090,000 will be applied against unrecovered Millstone Unit 2 costs with the balance of \$12,262,000 applied against FAS 109 regulatory assets earning a return (Company Brief at 10).

C. Analysis and Findings

At issue is whether the Act permits the Company to accelerate the amortization of the transition costs. G.L. c. 164, § 1G(e) states in pertinent part that:

Amortization of transition cost recovery may be accelerated relative to recovery of such costs assumed in current rates, but in no case shall such amortization result in an increase in rates for any class of customer of an electric company over rates in effect as of December 31, 1997, for that company. The department shall, on a case by case basis, determine the date upon which there shall be no allowance for transition cost recovery in any rate charged by any transmission or distribution company.

The Attorney General asserts that § 1G(e) addresses this issue but only for those rates in effect as of December 31, 1997, the initial unbundling period (Attorney General Reply Brief at 1-2).

While the Company argues that its accelerated recovery of transition costs is permissible under § 1G(e), we determine instead that § 1G(e) only addresses the amortization of transition cost recovery that may be accelerated relative to the recovery of such costs assumed in current rates (Company Brief at 7-8; Attorney General Reply Brief at 1-2). The Department finds that, to the extent the Company maintains the rate reduction required by the Act, and to the extent the amortization is applied to assets earning a return,⁹ the accelerated amortization of transition costs is in the best interest of ratepayers. Further, in examining the Company's proposal to accelerate amortization of costs, the Department finds that accelerated amortization of those assets earning a return at the Company's overall weighted average cost of

⁹ Accelerated amortization will be allowed when the interest applied to such assets is at a level that provides a benefit to ratepayers.

capital is appropriate. Therefore, the Department allows the Company's request to accelerate amortization of costs associated with Millstone II.

Finally, with respect to whether FAS 109 deferred taxes should be included as a regulatory asset, the Department stated in D.T.E. 97-120, at 82, that FAS 109 uncollected balances should not be included in regulatory assets earning a return. Further, the Department stated that "to the extent that the amortization of the FAS 109 balance occurs faster than the Company is required to pay the taxes, the Company is directed to include the collected but unpaid amount in the accelerated FAS 109 balance in regulatory assets earning a return." Id. In its response to a record request supplied after the close of hearings, the Company presented the Department with a table that included a column titled "Decelerated FAS 109 Earning a Return for Company" (RR-3, at 20). The response did not include any explanation as to the background and derivation of the numbers supplied in this column. Further, it is unclear why the Company, despite the Department's directive in D.T.E. 97-120, has included in its reconciliation any FAS 109 assets earning a return for the Company. The Company's reconciliation filing for calendar year 2003, which includes a FAS 109 component, is pending before the Department in a separate proceeding, docketed as D.T.E. 04-40. In the interests of administrative efficiency, the Department will conduct its investigation into the propriety of FAS 109 costs earning a return for the Company in D.T.E. 04-40.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the proposed transmission and standard offer service rate adjustments submitted by Western Massachusetts Electric Company on March 31, 2003, for the period January 1, 2002 through December 31, 2002, are APPROVED; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall comply with the directives of this Order.

By Order of the Department,

/s/
Paul G. Afonso, Chairman

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).